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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,645	10/16/2001	Peter Melchior	027392-000430US	7543
20350	7590	08/24/2009		
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER	
			DASS, HARISH T	
			ART UNIT	PAPER NUMBER
			3692	
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			08/24/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/981,645	<b>Applicant(s)</b> MELCHIOR ET AL.
	<b>Examiner</b> HARISH T. DASS	<b>Art Unit</b> 3692

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

1) Responsive to communication(s) filed on 15 June 2009.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 3.5-20,36 and 39-54 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 3.5-20,36 and 39-54 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

### **DETAILED ACTION**

This office action is in response to applicant's communication of 6/15/2008.

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/15/2009 has been entered.

**2. Status of claims:**

Claims 1-2, 4, 21-35 and 37-38 are canceled.

Claims 3, 5-20, 36, 39-54 are pending (claims 39-54 are new method claims).

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-20 and 36, 39-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tozzoli et al. (hereinafter Tozzoli – US 5,717,989) in view of Martin et al (Martin –

US 7,047,219) and Jarman ("Emerging Firms Get Vital Support at Pillar", Jarman, Max. Arizona Business Gazette, Phoenix: May 01, 1992. Vol. 112 Iss 17; Sec 1 pg 3).

Re. Claims 3 and 36, Tozzoli discloses means for allowing electronic procurement of a purchase order agreement between a seller and a buyer and relating to a transaction in one or more goods or services, and for electronically storing the purchase order agreement (purchase order) [col. 2 lines 1-3];

means for receiving and storing electronic evidence that the seller has performed in connection with fulfilling the seller's obligations as defined by the purchase order agreement [col. 13 lines 1-23];

means for electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement (BOL) [col. 16 lines 18-25];

means for electronically providing a payment instruction if the seller has been evaluated to have complied with the seller's obligations as defined by the purchase order agreement (insurance certificate)[col. 1 lines 5-57 ]; and means for receiving and storing electronic evidence that the buyer has made one or more payments in connection with fulfilling buyer's obligations as defined by the purchase order agreement [claim 1].

Tozzoli explicitly does not disclose means for electronically providing an opportunity for the seller to obtain financing in relation to the one or more goods or

services and financing to be utilized by the seller in producing one or more goods or services in accordance with the purchase order agreement.

Martin discloses means for electronically providing an opportunity for the seller to obtain financing in relation to the one or more goods or services [Figures 1-2; col. 1 lines 1-15, 55-67; col. 2 line 59 to col. 3 line 3; col. 7 lines 15-45]. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Tozzoli and include means for electronically providing an opportunity for the seller to obtain financing in relation to the one or more goods or services, as disclosed by Martin, to allow the seller (exporter) to securitized his invoices and secure a financing mean to improve his export productivity/capacity for meeting the buyer commitment.

The trading system of Tozzoli and/or Martin discloses purchase order, which is a contract or agreement between the buyer and seller. Neither Tozzoli nor Martin does not explicitly disclose the financing to be utilized by the seller in producing one or more goods or services in accordance with the purchase order agreement. However, Jarman discloses this feature. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Tozzoli and Martin and Jarman and include the above feature, as disclosed by Jarman, to provide crucial financing (loan) to emerging business to complete the project and fulfill the contract (purchase order agreement).

Re. Claims 5-6 and 39-40, Jarman, further, discloses wherein the financing comprises a

loan provided to the seller by a lender, wherein the lender is a financial institution.

Re. Claims 7-17 and 41-51, Tozzoli discloses wherein the financing is provided by a lending institution, and wherein the means for electronically providing an opportunity for the seller to obtain financing in relation to the one or more goods or services comprises means for allowing the seller, through the system to choose the lending institution from whom the seller is requesting the financing (see entire document particularly col. 1 line 1 to col. 4 line 63), wherein allowing the seller to choose the lending institution through the system provides at least one of a customer source and a sales channel to the lending institution (bank), wherein the lender becomes a party to a transaction associated with the purchase order agreement, and wherein the lender becomes entitled to at least a portion of payment (portion of insurance to cover loss) by the buyer in relation to the purchase order agreement, comprising means to allow the lender to access a first set of information through the system and relating to the transaction, wherein the first set of information is limited to information that is pertinent to the lender's involvement in the transaction, means for allowing the lender access through the system to information through the system relating to at least one of the buyer's credit qualifications and the buyer's credit exposure (credit limit – col. 5 lines 61-62), allow the lender access through the system to information relating to a cumulative amount (all transactions col. 5 lines 60-67) of credit exposure by the buyer to the seller based upon all transactions between the buyer and the seller for which the system stores information, wherein the lender is entitled to at least a portion of any cargo

insurance proceeds that may issue in relation to the transaction, wherein the lender is entitled to at least a portion of any buyer credit assurance proceeds that may issue in relation to the transaction (col. 1 line 1 to col. 4 line 63).

Tozzoli, Martin or Jarman does not explicitly disclose wherein the loan is provided to the seller at least in part in return for the seller assigning to the lender at least a portion of the seller's entitlement to payment from the buyer in connection with the purchase order agreement and , wherein the seller's obtaining the loan is contingent upon at least one of the seller's satisfying all of the seller's obligations as defined by the purchase order agreement and the buyer's waiving any rights to avoid any payments associated with the purchase order agreement due to the seller's failure to fulfill the seller's obligations as defined by the purchase order agreement. However, these are business choices. For example, the borrower may be obligated to purchase insurance and name the lender as a beneficiary in case of is/her loan default. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Tozzoli, Martin and Jarman and include the above clauses in the purchase order to enable the lender to recover and protect his fund or interest in event the borrower fails to pay.

Re. Claims 18-20 and 52-54, Tozzoli discloses evaluating whether a first set of payment guarantee criteria are met, and means for, if the first set of payment guarantee criteria are evaluated to be met, the system providing a payment guarantee to the seller to guarantee payment by the buyer in connection with the purchase order

agreement, wherein the first set of criteria comprises at least one of a credit exposure of the buyer being evaluated by the system to be within a specified maximum credit exposure, and the seller being evaluated by the system to have complied with the seller's obligations as defined by the purchase order agreement, wherein the means for electronically evaluating whether the seller has complied with the seller's obligations as defined by the purchase order agreement comprises means for electronically evaluating whether the seller has complied with at least a portion of the seller's obligations (shipping, BOL) as defined by the purchase order agreement, and wherein means for electronically providing a payment instruction if the seller has been evaluated to have complied with the seller's obligations as defined by the purchase order agreement comprises means for electronically providing a payment instruction if the seller has been evaluated to have complied with the at least a portion of the seller's obligations as defined by the purchase order agreement [col. 1 line 1 to col. 4 line 32].

***Response to Argument***

4. Applicant's arguments with respect to amended claims have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is required under 37 CFR ' 1.111 (c) to consider the references fully when responding to this action.

Thomas B. McVey ("Financing International Trade Transactions"; The International Executive (1986-1998); Sep/Oct 1989; 31, 2: ABI/INFORM Global) discloses a key part of any international business transaction is the financing which includes both the arrangements for transferring the funds in ways that minimize risk for the parties involved and importance of financing in international trade, and financing from Eximbank, and other agencies.

Blades, W Robert ("Taking the fear out of 'factor' financing", CA Magazine. Toronto: Dec 1994. Vol. 127, Iss. 10; pg. 46, 2 pgs); discloses factoring is the purchase of an account receivable. Effectively, it introduces a third party into the financing equation. Factoring can help businesses experiencing rapid growth, as well as help businesses meet other strategic objectives, and can be used as an alternative source of funding to a traditional bank operating line of credit.

Avery Wiener Katz ("An economic analysis of the guaranty contract"; The University of Chicago Law Review. Chicago: Winter 1999. Vol. 66, Iss. 1; pg. 47, 70 pgs); discloses the basic economic logic underlying the guaranty relationship, and applies the results to a variety of specific issues in government policy and private planning. It poses and answers 3 main questions: 1. Why would a creditor prefer to make a guaranteed loan rather than an unguaranteed one? 2. Given that they bear the

residual risk of debtor default, why would guarantors prefer to guarantee loans rather than make loans directly, thus forgoing the opportunity to earn interest payments that could help to compensate for the risk they bear? 3. Even if it is efficient for one creditor to provide funds and another to provide insurance against default, why would the parties prefer to implement this arrangement through the triangular form of a guaranty, instead of simply having the former creditor lend to the latter and the latter lend to the ultimate borrower?

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HARISH T. DASS whose telephone number is (571)272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Abdi Kambiz can be reached on 571-272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Harish T Dass/  
Primary Examiner, Art Unit 3692

8/20/2009